

### § 2570.33

(1) A power of attorney; or  
(2) A written certification from the applicant that the representation is authorized.

(c) If the authorized representative of an applicant submits an application for an exemption to the Department together with proof of his authority to file the application as required by paragraph (b) of this section, the Department will direct all correspondence and inquiries concerning the application to the representative unless requested to do otherwise by the applicant.

#### **§ 2570.33 Applications the Department will not ordinarily consider.**

(a) The Department will not ordinarily consider:

(1) An application that fails to include all the information required by §§ 2570.34 and 2570.35 or otherwise fails to conform to the requirements of these procedures; or

(2) An application for exemption involving a transaction or transactions which are the subject of an investigation for possible violations of part 1 or 4 of subtitle B of title I of ERISA or section 8477 or 8478 of FERSA or an application for an exemption involving a party in interest who is the subject of such an investigation or who is a defendant in an action by the Department or the Internal Revenue Service to enforce the above-mentioned provisions of ERISA or FERSA.

(b) If for any reason the Department decides not to consider an exemption application, it will inform the applicant of that decision in writing and of the reasons therefor.

(c) An application for an individual exemption relating to a specific transaction or transactions will ordinarily not be considered separately if the Department is considering a class exemption relating to the same type of transaction or transactions.

#### **§ 2570.34 Information to be included in every exemption application.**

(a) All applications for exemptions must contain the following information:

(1) The name(s) of the applicant(s);  
(2) A detailed description of the exemption transaction and the parties in

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interest for whom an exemption is requested, including a description of any larger integrated transaction of which the exemption transaction is a part;

(3) Whether the affected plan(s) and any parties in interest will be represented by the same person with regard to the exemption application;

(4) Reasons a plan would have for entering into the exemption transaction;

(5) The prohibited transaction provisions from which exemptive relief is requested and the reason why the transaction would violate each such provision;

(6) Whether the exemption transaction is customary for the industry or class involved;

(7) Whether the exemption transaction is or has been the subject of an investigation or enforcement action by the Department or by the Internal Revenue Service; and

(8) The hardship or economic loss, if any, which would result to the person or persons on behalf of whom the exemption is sought, to affected plans, and to their participants and beneficiaries from denial of the exemption.

(b) All applications for exemption must also contain the following:

(1) A statement explaining why the requested exemption would be—

(i) Administratively feasible;

(ii) In the interests of affected plans and their participants and beneficiaries; and

(iii) Protective of the rights of participants and beneficiaries of affected plans.

(2) With respect to the notification of interested persons required by § 2570.43:

(i) A description of the interested persons to whom the applicant intends to provide notice;

(ii) The manner in which the applicant will provide such notice; and

(iii) An estimate of the time the applicant will need to furnish notice to all interested persons following publication of a notice of the proposed exemption in the FEDERAL REGISTER.

(3) If an advisory opinion has been requested with respect to any issue relating to the exemption transaction—

(i) A copy of the letter concluding the Department's action on the advisory opinion request; or

(ii) If the Department has not yet concluded its action on the request:

(A) A copy of the request or the date on which it was submitted together with the Department's correspondence control number as indicated in the acknowledgment letter; and

(B) An explanation of the effect of a favorable advisory opinion upon the exemption transaction.

(4) If the application is to be signed by anyone other than an individual party in interest seeking exemptive relief on his own behalf, a statement which—

(i) Identifies the individual who will be signing the application and his position with the applicant; and

(ii) Explains briefly the basis of his familiarity with the matters discussed in the application.

(5)(i) A declaration in the following form:

Under penalty of perjury, I declare that I am familiar with the matters discussed in this application and, to the best of my knowledge and belief, the representations made in this application are true and correct.

(ii) This declaration must be dated and signed by:

(A) The applicant himself in the case of an individual party in interest seeking exemptive relief on his own behalf;

(B) A corporate officer or partner where the applicant is a corporation or partnership;

(C) A designated officer or official where the applicant is an association, organization or other unincorporated enterprise;

(D) The plan fiduciary who has the authority, responsibility, and control with respect to the exemption transaction where the applicant is a plan.

(iii) Specialized statements from third-party experts, such as appraisals or analyses of market conditions, submitted to support an application for exemption must also be accompanied by a statement of consent from such expert acknowledging that he or she knows that his or her statement is being submitted to the Department as part of an application for exemption.

(iv) For those applications requiring an independent fiduciary to represent the plan in the exemption transaction, each statement submitted by said inde-

pendent fiduciary must contain a signed and dated declaration under penalty of perjury that, to the best of said fiduciary's knowledge and belief, the representations made in such statement are true and correct.

(c) An application for exemption may also include a draft of the requested exemption which defines the transaction and parties in interest for which exemptive relief is sought and the specific conditions under which the exemption would apply.

**§ 2570.35 Information to be included in applications for individual exemptions only.**

(a) Except as provided in paragraph (c) of this section, every application for an individual exemption must include, in addition to the information specified in § 2570.34, the following information:

(1) The name, address, telephone number, and type of plan or plans to which the requested exemption applies;

(2) The Employer Identification Number (EIN) and the plan number (PN) used by such plan or plans in all reporting and disclosure required by the Department;

(3) Whether any plan or trust affected by the requested exemption has ever been found by the Department, the Internal Revenue Service, or by a court to have violated the exclusive benefit rule of section 401(a) of the Code, or to have engaged in a prohibited transaction under section 503(b) of the Code or corresponding provisions of prior law, section 4975(c)(1) of the Code, section 406 or 407(a) of ERISA, or 5 U.S.C. 8477(c)(3);

(4) Whether any relief under section 408(a) of ERISA, section 4975(c)(2) of the Code, or 5 U.S.C. 8477(c)(3) has been requested by, or provided to, the applicant or any of the parties on behalf of whom the exemption is sought and, if so, the exemption application number or the prohibited transaction exemption number;

(5) Whether the applicant or any of the parties in interest involved in the exemption transaction is currently, or has been within the last five years, a defendant in any lawsuit or criminal action concerning such person's conduct as a fiduciary or party in interest with respect to any plan;